

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





ONLY COPY AVAILABLE  
IN THE

74-2693

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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DOCKET NO. 74-2693

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UNITED STATES OF AMERICA

PLAINTIFF - APPELLEE

VS.

GUY DIGIROLAMO

DEFENDANT - APPELLANT

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APPENDIX OF DEFENDANT - APPELLANT

GUY DIGIROLAMO

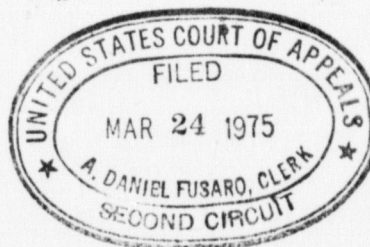
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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

v.

GUY DIGIROLAMO, a/k/a "TOK",  
CARL ALTERIO

CLERK  
U.S. DISTRICT COURT  
HARTFORD, CONN.

JUL 24 4 13 PM '73

FILED

13. 93

I N D I C T M E N T

The Grand Jury charges:

COUNT ONE

On or about May 18, 1973, at Monroe, Connecticut in the District of Connecticut, the defendant herein, Carl Alterio knowingly participated in the use of extortionate means within the meaning of Section 891(7), Title 18, United States Code, to collect and to attempt to collect from Harvey Adams, the debtor, an extension of credit, to wit: the defendant Carl Alterio, expressly and implicitly threatened the use of violence and other criminal means to cause harm to the person and property of the said debtor and others.

All in violation of Section 894, Title 18, United States Code.

COUNT TWO

On or about May 18, 1973 at Monroe, Connecticut in the District of Connecticut, the defendant herein, Guy DiGirolamo, a/k/a "Tok", knowingly and wilfully aided, abetted, counseled, commanded, induced, procured and caused Carl Alterio to threaten, expressly and implicitly, the use of violence and other criminal means to cause harm to the person and property of Harvey Adams, said threats by Carl Alterio constituting the use of extortionate means to collect and attempt to collect an extension of credit within the meaning of Sections 891(7) and 894 of Title 18, United States Code.

All in violation of Section 2, Title 18, United States Code.

COUNT THREE

On or about May 25, 1973, at Monroe, Connecticut in the District of Connecticut, the defendant herein, Carl Alterio knowingly participated in

1a



COUNT FOUR

On or about May 25, 1973 at Monroe, Connecticut in the District of Connecticut, the defendant herein, Guy DiGirolamo, a/k/a "Tok", knowingly and wilfully aided, abetted, counseled, commanded, induced, procured and caused Carl Alterio to threaten, expressly and implicitly, the use of violence and other criminal means to cause harm to the person and property of Harvey Adams, said threats by Carl Alterio constituting the use of extortionate means to collect and attempt to collect an extension of credit within the meaning of Sections 891(7) and 894 of Title 18, United States Code.

All in violation of Section 2, Title 18, United States Code.

COUNT FIVE

On or about June 1, 1973, at Monroe, Connecticut in the District of Connecticut, the defendant herein, Carl Alterio, knowingly participated in the use of extortionate means within the meaning of Section 891(7), Title 18, United States Code, to collect from Harvey Adams, the debtor, an extension of credit, to wit: the defendant, Carl Alterio, expressly and implicitly threatened the use of violence and other criminal means to cause harm to the person and property of the said debtor and others.

All in violation of Section 894, Title 18, United States Code.

COUNT SIX

On or about June 1, 1973, at Monroe, Connecticut in the District of Connecticut, the defendant herein, Guy DiGirolamo, a/k/a "Tok", knowingly and wilfully aided, abetted, counseled, commanded, induced, procured and caused Carl Alterio to threaten, expressly and implicitly, the use of violence and other criminal means to cause harm to the person and property of Harvey Adams, said threats by Carl Alterio constituting the use of extortionate means to collect and attempt to collect an extension of credit within the meaning of Sections 891(7) and 894 of Title 18, United States Code.

All in violation of Section 2, Title 18, United States Code.

COURT SEVEN

From on or about May 11, 1973 until on or about June 1, 1973 at Monroe, Connecticut and at other places in the District of Connecticut, Guy DiGirolamo, a/k/a "Tok", and Carl Alterio conspired to use extortionate means within the meaning of Section 891(7), Title 18, United States Code to collect and attempt to collect from Harvey Adams, the debtor, an extension of credit, to wit: the defendants Guy DiGirolamo, a/k/a "Tok", Carl Alterio conspired to make explicit and implicit threats of violence and other criminal means to cause harm to the person and property of the said debtor and others.

All in violation of Section 894, Title 18, United States Code.

A TRUE BILL

Patricia L. LeBeau  
FOREMAN

FOR STEWART H. JONES  
UNITED STATES ATTORNEY

Paul E Coffey  
BY: PAUL E. COFFEY  
Special Attorney



## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 6/5/73

On June 1, 1973, Special Agents JAMES P. MC NAMARA and RAYMOND M. LOONEY taped a recorder to the body of HARVEY ADAMS at the Sugar Cone, 444 Main Street, Monroe, Connecticut.

At approximately 10:05 PM, the following conversation was recorded:

Interviewed on 6/1/73 at Monroe, Connecticut File # NH 179-102

by SA JAMES P. MC NAMARA and  
SA RAYMOND M. LOONEY JPM:af1 Date dictated 6/4/73



HARVEY: I told Tok on the phone, I wasn't giving you nothing.

CARL: Harvey, I don't care what you told Tok.

HARVEY: I told him on the phone, Carl, I ain't got it.

CARL: I don't care what you told Tok.

HARVEY: What am I supposed to do Carl? I ain't got it. I ain't got it. That's what I told him.

CARL: Well, I tell you you better get it.

HARVEY: I can't. I can't get it.

CARL: What you got in there?

HARVEY: Uh, uh, that's mine, my business money, that's what I got in there.

CARL: Yeah, yeah, I don't give a fuck.

HARVEY: Well I give a fuck, it's mine. What am I supposed to do give you my business money?

CARL: Yeah

HARVEY: I can't.

CARL: Can't?

HARVEY: I can't. What am I supposed to do?

CARL: Come here and I'll tell you.

HARVEY: Huh, Carl, could I ask you something?

CARL: Come here and I'll tell you.

HARVEY: Could I ask you something? Wait a minute. Don't  
don't hit me for nothing.

CARL: Look it, I ain't hitting you.

HARVEY: Why you gonna hit me? I ain't got it.

CARL: I don't give a fuck, Harvey, I don't want to hear it man, I told you that.

HARVEY: If I had it Carl, I had it, But I ain't got it. I ain't got it.

NH 179-102

3

CARL: I ain't got it, huh?

HARVEY: I gotta pay the bills.

CARL: Yep

HARVEY: If I didn't have to pay the bills, I'd give it.  
How am I gonna pay the bills?

CARL: ~~I'll tell you, Harv. you're gonna fucking pay, man.~~  
You owe 10,000 fucking dollars.

HARVEY: I can't. How about Angelo?

CARL: I don't give a fuck about Angelo or anybody else.

HARVEY: What's Tok say about him? Because it's his brother?  
That ain't fucking fair.

CARL: I don't give a fuck. What's fair or what's not fair.

HARVEY: Well, what Tok say to you.

CARL: I work. He told me to come up here and get it.  
That's what he told me.

HARVEY: Well, he didn't say that to me.

CARL: Yeah, well, call him.

HARVEY: Uh?

CARL: Call him.

HARVEY: I ain't calling him.

CARL: Why not?

HARVEY: I ain't calling Tok. Why call Tok? I told him on  
the phone what I had to do. If I didn't tell him,  
Carl, it'd be different, but I told him on the phone.  
He got all those kids over there. You can't call him  
on the phone.

CARL: Well, I'll tell you what, what's that. I I don't give  
a fuck. What's that Kirby vacuum cleaner worth?

HARVEY: Huh? Well you ain't taking that.

CARL: I ain't.

69



NH 179-102

4

HARVEY: No

CARL: I'm taking something.

HARVEY: You ain't taking anything.

CARL: I ain't?

HARVEY: No

CARL: No? Well, I'll tell you then, get me 50 fucking dollars

HARVEY: I ain't got it. Carl, I'm telling you you ain't taking nothing else.

CARL: I ain't?

HARVEY: No

(background conversation)

HARVEY: I told you I don't have it. What can I say? I told Tok on the phone the same thing, Carl. I says, Tok if I had it, I'd give it to you. I ain't got it What am I supposed to do? I told Tok and he didn't say nothing. He didn't say a word.

CARL: He wants his money, that's what he wants.

HARVEY: Well, I told him when I called, I can't pay.

CARL: Do you think I'm here for my fucking health? Huh, or what?

HARVEY: Go talk to Tok, don't talk to me. Tok sent you up here right?

CARL: Right

HARVEY: Then, why, why should you talk to me?

CARL: I, I talk to you for the fucking money. That's why.

HARVEY: Yeah, but Tok told you to come up. I didn't tell you to come up here.

CARL: You didn't tell me to come up here?

HARVEY: No

7a

CARL: Huh, huh, huh, like who the fuck are you to tell me to come up here.

HARVEY: Well, who the fuck are you? You're gonna come in here and take my Kirby ah thing, you know?

CARL: Well, I'll tell you, it's gotta be paid one fucking way or the other.

HARVEY: I ain't got it. I ain't got it. I got a million bills. How am I gonna pay. What am I supposed to go bankrupt? (inaudible) I can't go bankrupt, Carl. What Tok say about that?

CARL: Tok don't care.

HARVEY: So how else is he

CARL: What's he supposed to fucking say about it?

HARVEY: What's what's, what's he going to get it for 2 weeks?

CARL: What?

HARVEY: What's he gonna get the money for two weeks, and I go bankrupt?

CARL: Well, it's fucking two weeks, uh, regardless.

HARVEY: What do you mean?

CARL: Regardless. You'll get it, don't give me that fucking bull shit.

((background conversation))

CARL: Harv, don't give me that fucking bull shit. You know just as well as I do.



NH 179-102

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HARVEY: I don't understand.

CARL: Just as well as I do.

HARVEY: What?

CARL: You got the money, don't give me that fucking bull shit.

HARVEY: I got bills. I'm telling you I got bills.

CARL: Harvey, that's all the fuck I ever hear from you.

HARVEY: Well, I got bills. What am I supposed to do?

CARL: That's all the fuck I ever heard from you.

HARVEY: I work every day. I work seven days a week. I ain't working for the money? I ain't working like a nigger? Really, am I working like a nigger? I'm working seven days a week, Carl. If I wasn't working seven days a week, I'd give it to you if it was gambling money. I'd hand it to you. It ain't gambling money though. This is sweat money. My old man comes up here, he checks the register if it's fucking short, he goes nuts. I ain't getting thrown out. ~~Yeah I don't know why~~ you're smiling. I can't figure it out.

CARL: You can't figure it out, huh?

HARVEY: No

(background conversation)

HARVEY: Carl, if I had it, I told Tok, if I had it, I'd give it to him. I don't have it. I told him not to send you up. He don't listen. I said to him on the phone, Tok I said, what are you sending him up for, I ain't got nothing. I haven't got a penny. I said I got bills every fucking week. He didn't say nothing. He didn't say a word. He just started talking, I don't know.

CARL: He didn't say a word, huh? He didn't say he wanted the fucking money, did he?

HARVEY: No

CARL: Oh, fuck, huh?

HARVEY: He didn't say he wanted the money. He says its out of my hands. I can't do anything. That's what he said to me. But I didn't say it.

CARL: But he didn't, he didn't say it.

HARVEY: Well, but that's what you say. That's what you said.

CARL: It's out of his hands.

HARVEY: Yeah, but I didn't say it.

CARL: I don't understand what the fuck you're talking about, you didn't say it.

HARVEY: You said, you said, you, I made you come up here. I didn't make you come up here.

CARL: No, I never said you made me come up here.

HARVEY: Why say I came all the way up here for you. You said that right there.

CARL: I said I came all the way up here to get 50 fucking dollars.

HARVEY: Right, from me.

CARL: Yeah, right

HARVEY: But I didn't make you come up here. What do you say, I made you, I didn't make you.

CARL: You owe the fucking money, that's what.

HARVEY: Yeah, but I didn't.

CARL: Made me come up here.

HARVEY: How did I make you, I told you.

CARL: Cause you owe the fucking money, and I come up here to get it.

HARVEY: Yeah, but I told you on the phone I didn't have it.



NH 179-102

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CARL: I don't give a fuck what you told me on the phone.

HARVEY: what do you mean? I don't understand you.

CARL: Just what I said, I don't give a fuck.

HARVEY: Why?

CARL: Because I want the fucking money.

HARVEY: I ain't got it though. I ain't got it Carl. How am I gonna give it to you? Huh? What am I supposed to, make it? I'm working seven days a week. I ain't making no money. I'm paying my wife fucking money. It ain't simple as though you pull it out of a tree. My old man's gonna throw me out if I fuck around. Where am I going? I ain't blowing my business and my fucking life for Tok. I'm telling you right now. I can't. I can't do this. I can't I'd rather get fucking shot. I told him on the phone that. What am I supposed to do? Huh? You tell me what I'm supposed to do.

CARL: Yeah, you supposed to fucking rob, steal or what.

HARVEY: No, no, I don't, I can't rob, steal or what. No.

CARL: No?

HARVEY: I can't. I ain't built that way. Angelo owes me the money. What happened there? With the 10,000 he owes me.

CARL: I don't know nothing about that.

HARVEY: I know. Everybody don't know nothing about it. But when it's about me, what am I supposed to do? Is that right or wrong? When it's about me, now Angelo owes me the money. Tok ain't collecting it from him. He can go ask Angelo for 25 a week. Just switch the tops. He got screwed from people in New York, right? Why don't he go see them people. Why's he gotta bother me? Explain that to me, okay? Am I right or wrong? If I'm wrong tell me. Angelo owes me 11,000 dollars right? Why can't Tok get that from him? Cause it's his brother? He screwed you out of money too. You told me that. Did he, or didn't he?

CARL: Angelo.

11 a

HARVEY: I thought you collected money for him, he didn't give you nothing.

CARL: That's besides the fucking point.

HARVEY: Everything everybody's getting screwed except Tok. That's right? When you got screwed with Angelo, Tok was on the good end. When I'm getting screwed, Tok's on the good end. Why's that? Why are we always the niggers? That ain't fucking right? Do you understand what I'm saying?

CARL: Yeah, I understand what you're saying.

HARVEY: Well, then what am I supposed to do? Huh? Carl.

CARL: What?

HARVEY: What am I supposed to do? What?

CARL: Huh?

HARVEY: What did he tell you we did on the phone?

CARL: What?

HARVEY: What did he tell you I said on the phone?

CARL: He told me to come up here.

HARVEY: Yeah

CARL: Yeah

HARVEY: Well, for what reason?

CARL: For what reason? To collect the fucking money.

HARVEY: Yeah, but I told him on the phone I wasn't giving it to you. I told him that on the phone, I said I can't give it, I ain't got it. Oh, he told you to come up here anyhow.

CARL: Well, I'll tell you, I'll tell you fucking Harvey, I'll tell you, you know I'll tell you, I'll tell you, I'm gonna fucking rack you're fucking brains in.

HARVEY: Why though? Cause Tok told you to?



CARL: /I was gonna beat your fucking brains in.  
HARVEY: Why though?  
CARL: You fucking  
HARVEY: For what reason? I don't understand your reason.  
I told you his brother owes  
CARL: Look it  
HARVEY: Me the money, would you give it to him.  
CARL: Look it  
HARVEY: Wait a minute, would you give him the money?  
CARL: Give him.  
HARVEY: Tok  
CARL: Well, you and me is two fucking different people.  
HARVEY: Right  
CARL: For one thing.  
HARVEY: Right  
CARL: And for another thing, I work for Tok. That's  
HARVEY: Okay, you work for Tok. That's alright. If Angelo  
screwed you and then Tok, you owed Tok.  
CARL: How about when, how about when the fuck I, you had me  
around, did did you fucking do right by me? You  
didn't do fucking right.  
HARVEY: I paid your rent over there and everything  
CARL: Harvey, don't give me that bull shit.  
HARVEY: I treated you good.  
CARL: Yeah, bull shit.  
HARVEY: Tok, okay, Tok pushed you off on me. That's right.  
Tok's a smarty, that's all. He's got a lot brains.  
He's got a lot of brains. He gets you mad at every-  
body and then you do what he says. But that ain't  
right.

CARL: Yeah, well fuck him too.

HARVEY: Well, tell him.

CARL: Okay Harvey, that's the only fucking reason why I'm paid. If it wasn't for that you wouldn't fucking get away with it.

HARVEY: Well, that's why I told Tok not to send you up here.

CARL: If it wasn't for that, pal, you wouldn't get away with

HARVEY: Wasn't for what?

CARL: Cause I'll tell you, if it wasn't for what the fucking bull shit that going on, with Tok and his fucking crap, huh, you wouldn't get away with it. You fucking pay one way or the other. One fucking way or the other. You either go to the fucking hospital or that's one fucking way, I'll tell you.

HARVEY: I'll tell you Carl, let me tell you something. When I'm right, huh, when I'm right, I'm right. And you know that, cause I'm a scared. I ain't afraid, I ain't afraid to tell you I'm a scared. But, when I'm if I'm standing here and told to come up here and beat the shit out of me, I didn't say nothing.

CARL: But you, that's the only fucking reason, because, okay, all right, that's the only fucking reason.

HARVEY: Well, I don't know.

CARL: I'm sick of fucking people's fucking bull shit myself.

HARVEY: Well what (inaudible), huh? okay, tell Tok I ain't paying him.

CARL: You told him already, right?

HARVEY: Huh?

CARL: You told him already.

HARVEY: Yeah, but tell him again. He's leaving.



Q In October, 1972, were you wagering with Angelo DiGirolamo?

A Yes, I was.

Q How were you wagering with him?

A Over the phone.

Q And how long a period of time?

A It was only a little while, because I beat him for a lot of money, I was betting with him, and he -- and he lost about \$11,000, I won from him.

Q Were you paid that \$11,000?

A No, I wasn't.

Q Did you ask him to pay you that amount of money?

A Yes, I did.

Q Did he, in fact, pay you at any time?

A No.

Q Now, have you ever had occasion to wager with the defendant Tok DiGirolamo?

A Yes, I did.

Q And when did you first start wagering with him?

A It was a couple months, about three months after that, couple months after that.

Q Is there any event or day which fixes in your mind the approximate time?

A January. January.

2 Q Of what year?

3 A '73.

4 Q Now, as a -- what type of events were you wagering with  
5 him?

6 A Football.

7 Q Is football being played in January?

8 A Yeah, Super Bowl.

9 Q And do you know today whether you won or lost money  
10 that were you were wagering with the defendant?

11 A I lost \$10,000, approximately.

12 Q Did the defendant indicate to you that you should pay that  
13 amount of money in January, 1973?

14 A Yes, he did.

15 Q What did you indicate to him?

16 A I told him if his brother owes me the money, so why  
17 should I pay him?

18 A JUROR: I'm sorry, I didn't hear that.

19 THE WITNESS: My brother --

20 (Answer read.)

21 THE COURT: Keep your voice up, Mr. Adams.

22 A Then Tok just let it go for a couple of months and  
23 he didn't bother me, you know, for a while.

24 Q Now, directing your attention to the months of February,  
25 March, 1973, two months following the Super Bowl, did you have any



11

Adam - direct

\* \* \*

Q Directing your attention to May, 1973, do you recall you spoke with him during that month?

A Yeah, I spoke to him on the phone. He called me up, he says I better have something for him, "Even if you go steal me from your father," he says, "I've got to have something, you got to start paying something."

Q What did you tell him?

A I told him I couldn't do it, my father was checking books, and I robbed enough money from my father, I robbed my father almost blind for these people.

Q Was there any discussion of what would happen if you did not get pay?

Q Yes, I was going to get my brains busted by Carl.

Q Who told you that?

A Tok.

Q On the phone?

A Yeah.

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Adam - direct

Q Would you accept the fact that May is --

MR. HANKEN: I'll object, your Honor.

THE COURT: He said he doesn't know what the fifth month of the year is.

Q Sir, would you please silently count to yourself and determine what the fifth month of the year is?

A I don't really know the months. To count on my fingers I don't.

\* \* \*



17

Adam - direct

THE COURT: The question is: Do you recognize it?

A. Yes, I do.

Q. All right. Would you turn to page 12, please?

Do you have any trouble reading, Mr. Adam?

A. Yeah. I'm supposed to wear glasses.

Q. Can you read without your glasses?

A. Not too good.

Q. Can you make out what the words --

A. Yeah.

Q. Would you read pages 11 and 12, please, and after you read it, the question is: Does that refresh your memory as to the date that Mr. Alterio came in to see you at the Sugar Cane for the first time?

A. I can't make out some of the words.

Q. Do you have your glasses with you?

A. No, I don't.

Q. Do I understand you can't read it at all?

A. No, my eyes go blurry, I start reading, then they go blurry, I can't read the letters at all. The words. I could read 'em, and then I can't read 'em.

\*

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19a

1 26 Adam - direct

2 Q And what conversation, if any, did you have with  
3 Mr. Alterio concerning that loan?

4 A He took me in the back room, and he says: "Harvey,  
5 you have to pay something, and that's all. I got -- Tok  
6 sent me up here to get anything, a hundred dollars I supposed  
7 to give him, but," he says, "I'm going to take it out in stuff  
8 and whatever," so I gave him \$20, I'm so scared, that's all I  
9 had on me, I gave him \$20, and then he says, "Okay, I be back  
10 next week."

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1 27

Adam - direct

2 Q And did Mr. Alterio come back that Friday?

3 A Yes, he did.

4 Q And was the FBI there when he came back?

5 A They're all over.

6 Q What was said on that occasion?

7 A Well, that's the time he came in, he just came in and  
8 taped up --9 MR. HANKEN: I'll object, your Honor, until the  
10 time is specified, until the date is specified.11 THE COURT: I think we narrowed it down.  
12 Can you remember the exact date?

13 THE WITNESS: No.

14 THE COURT: All right. But I think there's  
15 testimony in now when the tape recorded -- recording  
16 was made through Mr. McNamara, and we're proceeding  
17 now with that -- enough reference for the jury to know  
18 what period of time, if not the exact date that we're  
19 talking about. Objection is overruled.20 Q What conversation did you have with Mr. Alterio on that  
21 second occasion he came into your shop?22 A Well, the second time we went -- in the take-out area  
23 again.

24 THE COURT: Keep your voice up.

25 A We went out in the take-out area, and he said I had to

28

Adam - direct

pay him, he kept on throwing his finger in my face and punching his hand.

MR. HANKEN: I can't hear you.

THE WITNESS: He kept on throwing his finger in my face like he was going to kill me.

MR. HANKEN: I'll object to that characterization, your Honor.

THE COURT: Sustained. The jury is instructed to ignore the remark of the witness; just tell us what he did or said.

THE WITNESS: He said I have to paying him something or else I'm going to get busted up, and he just kept on punching his hand, and he kept on looking at me real, you know, like he looked -- he just looked at me really like -- like stone face.

MR. HANKEN: I'll object, your Honor.

Q Would you tell the ladies and gentlemen of the jury what your own state of mind was at the time you were talking to Mr. Alterio? Do you understand the term "state of mind"? Right.

A I was so nervous, that even with all these FBI agents that didn't -- I was even more nervous than, too, because he scares me, he's really a strong person.

Q Now, was Agent Lester there on that occasion?



32

Adam - direct

Altario, did you have occasion to speak with him again?

A. Yes.

Q. When?

A. It was on a Wednesday. He came in with Louis Piazza, I'm not sure of the date, but that was the time and Lou --

Q. How long did they stay in your ice cream parlor?

A. Not too long, Louis --

Q. Sir, you can't state what Mr. Piazza said. Where did you see them go, if anywhere, after they left your ice cream parlor?

A. Well, they came in -- they went right around -- right around the counter, went down -- not downstairs, in our take-out area, and the guy made them a few ice cream sundaes and banana split, and I says, "Aren't you going to pay for that, Carl?"

And he says, "Yes, come on, take it out of my pocket." That means he ain't paying.

MR. HANKEN: Your Honor, I'll object to this.

THE COURT: Just tell us what he said.

THE WITNESS: That's what he said, then he left, and he didn't pay.

Q. Did you have occasion to meet with him again?

A. He called me about two hours later, he says, "You can get the FBI, you can get anybody you want, you are paying," and he slammed the phone up.

Q. After this particular meeting with Mr. Altario, do

33

Adam - direct

you recall if you had occasion to speak at any time with Mr. DiGirolamo?

A. Tok called me up.

Q. How soon after this incident?

A. I think it was a couple days later, or a day later, he says --

Q. What did he say to you?

A. He says: "Harvey," he says, "I don't care if you get me it from your father's store, I don't care what you get, but you are going to have to pay this," and I says -- I told him I couldn't.

He told me, "Well, Carl's coming up, and I can't control him any more." That means, like --

Q. That's what he said?

A. Right.

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A. Well, he says I have to give him something, even if I have to rob from my father, and I have to give him something, money, either money or food or something.

Q. And what did you indicate?

A. I told him I wouldn't steal from my father again.

Q. And what did he indicate as a result of that?

A. Well, he told me it's out of his hands, that means he's going to send somebody up there to take care of me.

Q. What else did he say, if anything?

A. I don't remember.

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Adam - direct

Q You don't recall anything else being said?

A Well, I was supposed to get the meat or the money,  
or he was going to send Carl up to take care of it.

MR. HANKEN: Your Honor, somebody up there --

THE COURT: Give us your best recollection of  
exactly what he said to you and what you said to him.

A His exact words were, you know, I can't take care  
of him, speaking of Carl, because that's the only one we're  
talking about, and then he says he'll be up there.

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Q When was the first time you contacted him with regard to this case?

A I contacted Mr. McCarthy about 25th, something like that, May 25th, something like that.

Q Of what year?

A 1973.

Q This was the first time you contacted him, was May

1  
2 25th?

3 A I think so, yes -- no, I contacted him the week  
4 before.

5 Q May 18th?

6 A Yeah. I'm not sure of either one of those two  
7 days.

8 Q You are not even sure of the month, are you,  
9 really?

10 A Yeah.

11 Q You told us when you testified before the recess  
12 that you could not remember what month it was?

13 A Right.

14 Q Have you had your recollection refreshed during  
15 the recess?

16 A Right.

17 Q How did that come about?

18 A I read the transcript over.

19 Q You went to Mr. Coffey's office and read over the  
20 transcript?

21 A Right.

22 Q Prior to reading over the transcript you did not  
23 remember dates; is that correct?

24 A Pardon me?

25 Q Prior to reading over the transcript you did not



remember dates; is that correct?

A Right.

Q And then Mr. Coffey showed you the dates?

A Right.

Q And now you remember?

A Right.

Q Did you go over any of your other testimony during the recess?

A No.

Q When did you first meet Mr. Alterio?

A Couple of years ago.

Q Could you try and pin -- give us dates, please?

A I don't have any idea.

Q 1971?

A '71 or '2.

Q Or 1972?

A It could have been seventy -- it could have been three -- could have been two years. I'm not sure the date.

Q It could have been 1970?

A I'm not sure of the date.

Q Let's go one year at a time. Could it have been 1970?

A I'm not sure of the date.

Q Could it be 1969?

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THE WITNESS: Could I have a glass of water?

THE COURT: Get some water.

MR. HANKEN: All right.

THE WITNESS: Thank you.

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Q Are you still nervous, Harvey?

A What am I to be nervous about?

Q You are not now?

A I was.



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Q You told us before --

A I was.

Q After the recess you are not?

Did you take any pills, Harvey?

A No.

Q You have taken drugs; haven't you?

A I don't take drugs, no.

\* \* \*

\* \* \*

THE COURT: I checked my notes with respect to the Mansini trial, and, at least according to my notes and subject to correction by the Government, it indicates that Mr. Adam testified that he was conducting wagers with Mr. Mansini from around November 1972 through April 1973, and they had discussions about wagers through June of 1973 and I believe into July.

So I am going to allow cross-examination because of his answer -- that is, Mr. Adam's answer -- that he could not remember placing wagers with anyone else than the two Digirolamo brothers during this period of time with respect to



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Adam - cross

119

Mr. Mansini.

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SANDERS, GALE & RUSSELL  
CERTIFIED STENOGRAPHIC REPORTERS

750 MAIN STREET  
HARTFORD, CONNECTICUT

34a  
205 CHURCH STREET  
NEW HAVEN, CONNECTICUT

\* \* \*

THE COURT: I think if you stay within your parameters of your offer, I would clearly think you were within testing recollection and credibility, because it makes common sense. If a man is on the stand in this trial and is asked the question "Did you place wagers with anyone else during October 1972 to June 1st of 1973," and he says "I did, but I don't recollect with whom," and he not only placed them with Mr. Mansini during that period but actually testified against the man in this very courtroom just a few months ago, under oath, I do think that all goes to credibility.

If we go beyond that --



\* \* \*

Q Do you have some type of mental problems now--

A No.

Q -- that prevent your recollection of events?

A You go through a divorce, you have a lot of problems with bills and all, you know, that sort of takes your mind away from the gambling world, remembering people.

Q It affects your ability to recall events; isn't that true?

A Yeah.

Q You do not recall events as accurately as you might have --

A Right.

Q -- if your head was clear and your mind clear?

A My mind is clear. If I paid attention to it, I'd be better at it.

Q Paid attention to what?

A To everything that was said at those garages, if I paid more attention.

\* \* \*

Q Do you know a fellow by the name of Perry?

A Very well.

Q Did you bet with a fellow by the name of Perry?

A Yes.

Q When did you bet with him?

A Couple of years ago.

Q June 1972?

A Somewheres in there.

Q Remember that being the period of November 1972?

A I'm not sure of the date.

Q Would you say I am wrong if I said it was November  
of 1972?

A I wouldn't say you are right or wrong.

MR. COFFEY: Objection.

THE COURT: Sustained.

MR. HANKEN: I will withdraw it.



Adam - cross

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Did you at one time testify under oath that you  
had never bet with Perry?

A Yeah, but I mis --

Q Sir, now wait.

A Yes.

Q Please just answer my question.

A Yes.

Q You did testify to that under oath?

A Right.

Q That was not true; isn't that true?

A That was a mistake.

Q Was it true?

A I just said it was a mistake.

Q First things first. Was it true when you said  
that you never bet with Perry?

A Oh, I don't know.

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Q You do not know?

A I don't know about the dates.

Q I will ask you again:

Did you testify under oath to a grand jury that  
you had never bet with Perry?

A Right.

Q Was that statement true or false?

A It was false.

\* \* \*



ago I started betting with him.

Q Harvey, are you feeling all right?

A I feel fantastic.

Q Did you take any pills or anything during the recess?

A Why do you ask me that all the time? Because I look at you while you look at me?

Q I am going to ask you some more questions.

A All right.

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1  
2 Q So these dates that you testified to really do  
3 not mean much to you? In other words, we cannot put too much  
4 credence in what you say as far as dates are concerned; isn't  
5 that true?

6 A Right.  
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THE WITNESS: Could I have another glass  
of water?

THE COURT: Yes.

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42a

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2 or that Mr. DiGirolamo had sent him there to put you in a  
3 hospital or to harm you in any way. You show me where it  
4 says that.  
5

6 THE COURT: The record should note that,  
7 at least from my observation, the witness has  
8 been looking at that piece of paper, page 1, for at  
9 least a minute. It seems obvious to the Court  
10 he is not even partway through page 1, and we have  
11 at least eleven pages to go.

12 Secondly, it appears that he is having some  
13 difficulty in reading that document.

14 MR. HANKEN: I was not watching him, your  
15 Honor.

16 THE COURT: You have a perfect right to  
17 proceed the way you are. Do not misunderstand the  
18 Court.

19 I am just wondering if we can go on to  
20 something else, and when he comes back tomorrow he  
21 can answer this question, having taken the  
22 transcript home overnight.

23 Are you having some difficulty reading?

24 THE WITNESS: Yes.

25 THE COURT: Pardon me?

THE WITNESS: Yes, I am.



1  
2 THE COURT: Do you think you would do better  
3 if you had your glasses?  
4

5 THE WITNESS: Yeah.

6 THE COURT: Do you have your glasses at  
7 home?

8 THE WITNESS: Yeah.

9 THE COURT: You asked him where in the  
10 transcript certain things appear. Do you mind  
11 holding that question over until tomorrow morning,  
12 so that tonight, with his glasses, he can read the  
13 document?

14 MR. HANKEN: I have no objection to that,  
15 except your Honor can understand my apprehension  
16 a little bit in that I would prefer that he not  
17 speak with anybody about what is in it or have  
18 ideas put into his head of what might be construed  
19 as to what he says it was. Just have him read  
20 it alone and come in cold tomorrow morning is what  
21 I prefer.

22 THE COURT: I think that is reasonable,  
23 at least with respect to this particular item,  
24 because I feel you have a perfect right to have  
25 him sit there if it takes him two hours to answer  
your question.

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Adam - cross

151

Just do this on your own tonight when you  
have your glasses, and maybe the first question  
tomorrow will be an answer to Mr. Hanken's  
question.

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459



Adam - cross

Q So now we're through May 18th, so when is the next time you called? I withdraw that.

When is the next time DiGirolamo called you?

A The 25th.

Q And what time was that?

A In the afternoon.

Q Do you know what time?

A Between 2:00 and 4:00. I remember because the lunch hour just got over.

Q Now, you said Mr. DiGirolamo called you on the 25th?

A Right.

Q Did you tell that to Mr. McNamara?

A I called him that same night right after he called.

Q I show you this document and ask you if this refreshes your recollection as to whether or not you told Mr. McNamara that Tok had called you?

A Want to read it to me? My eyes hurt too much.

Q Your eyes hurt?

A Yeah.

Q But you are saying you told this to Mr. McNamara?

A I called him up that day.

Q After Tok called, what happened then?

A He said Carl was coming up, and then Carl called.

Q He said Carl was coming up?

5

Adam - cross

1 A. Right.

2 Q Those were the words?

3 A. Right.

4 Q That's the sum and substance of the conversation?

5 A. No, he says, "Carl's going to come up, you better give  
6 him something."

7 Q "You better give him something"?

8 A. Give him some money.

9 Q Give him some money?

10 A. Right.

11 Q And you said, "No," right?

12 A. I says Carl. -- I mean, "Tok, I don't have it."

13 And he says, "You better get it," something like that.

14 Then Carl came up.

15 Q When you said "something like that", you aren't giving  
16 us the exact words, are you?

17 A. No, I'm not giving you the exact words, because I asked  
18 you the exact words of something happened six months ago,  
19 you wouldn't remember that -- then, either.

20 Q You can't remember the exact words?

21 A. Right.

22 Q You are paraphrasing what he said to you?

23 A. I'm trying to, yes.

24 Q Approximately, what time did Carl get there?



has been provided by the Government.

MR. HANKEN: Just one other thing, your Honor. I would like to know if the witness brought his glasses today.

THE WITNESS: I found them, but they're broke.

MR. HANKEN: You are telling us you are not able to read today?

THE WITNESS: Yeah.

MR. COFFEY: I have been informed two things: One, that does not mean Mr. Adam cannot read; and, secondly, Mrs. Consiglio's glasses apparently allow this individual to read just as well.

THE COURT: I do not care who owns the glasses, so long as, if he is asked to read something, there is something available that aids him. Why don't we use whatever means that he feels comfortable with.

If these glasses help you --

THE WITNESS: Yeah.

THE COURT: They do? Pardon me?

THE WITNESS: They do, yes.

THE COURT: Very well, you can use them.

1  
2 A What was the question again?

3 Q The question was when you said to Carl "Don't hit  
4 me for nothing" or "Don't hit me for anything" --

5 A I think he said -- I think he said "Who's going to  
6 hit you."

7 Q You cannot remember his exact words?

8 A No.

9 Q Haven't you testified to conversations you have  
10 had with other people where you at least give the impression  
11 to the jury that you remember the exact words?

12 A No, I didn't give that impression, I don't think.

13 Q In other words, what you testified to,  
14 conversations with Mr. DiGirolamo -- these are not exact words,  
15 at any rate; is that true?

16 A What was that?

17 Q The conversations you testified to --

18 THE COURT: Is there an objection.

19 MR. COFFEY: I believe Mr. Hanken said  
20 conversations he had with Mr. DiGirolamo. I think  
21 he is asking about conversations he has had with  
22 Mr. Alterio.

23 BY MR. HANKEN:

24 Q Put it this way:

25 Do you remember the exact words --



THE COURT: Do you withdraw the question?

MR. HANKEN: I withdraw the question.

THE COURT: All right.

BY MR. HANKEN:

Q You cannot remember the exact words of your conversation with Mr. Alterio? Isn't that true?

A No.

Q Although you heard the tapes a number of times and you have read the transcripts a number of times and as recently as last night?

A Right.

Q Now --

A Word for word I don't.

Q I presume the same situation applies with your conversations with Mr. DiGirolamo which were not taped--

A Absolutely.

Q -- not transcribed; so you are not giving his exact words when you relate those conversations?

A Right.

Q You are just giving the best of your recollection?

A Right.

MR. COFFEY: May I have a date, please?  
Which conversation?

MR. HANKEN: Any conversations that he has

testified to involving Mr. DiGirolamo.

BY MR. HANKEN:

Q Is that a fair statement?

A Yes.

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What was your mental condition after June 1st?

A Good.

Q Did you have all your faculties?

A Huh?

Q Did you have all your faculties after June 1st?

A After the incident -- I have to answer that with  
a sentence. Okay.

\* \* \*

BY MR. HANSEN.

Q Isn't it true that you were in a great deal of debt to other bookmakers in the latter part of the year of 1972, November and December?

A Yes.

Q And isn't it true that you were not even able to pay one gentleman the sum of \$2400 or \$3400?

A There was a reason for it, though.

Q Isn't it true that you were not able to pay him that sum?

A Right.

Q And isn't it true that you came into court and testified against this man in January --

A Right.

Q -- and said you could not pay him?

A Right.

Q Isn't that the same gentleman we referred to yesterday, whose name you could not remember, having placed bets with in November of 1972, although you testified against him in court in January of 1974?



- 1  
2 A Yes, but I didn't --  
3 Q Is that the same gentleman, sir?  
4 A Yes.  
5 Q You testified in this very courtroom; didn't you?  
6 A Right.  
7 Q Matter of fact, it was in front of Judge Zampano --  
8 A Right.  
9 Q -- who is presiding at this trial; isn't that true?  
10 A Right.  
11 I made a mistake.  
12 Q You could not remember his name yesterday?  
13 A I made a mistake.  
14 Q You could not remember his name yesterday?  
15 A Right.  
16 Q You could not remember who you bet with in 1972--  
17 A Right.  
18 Q -- although you testified at this trial that you  
19 had bet with this certain party in November of 1972--  
20 A Right.  
21 Q -- and you could not even pay him \$2400?  
22 A Right.  
23 Q And, knowing that, you went to Mr. DiGirolamo and  
24 were making thousand-dollar bets? Isn't that true?  
25 A Right.

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\* \* \*

Q Did you ever indicate to Mr. McNamara that these remarks had been said to you by Mr. DiGirolamo?

A Yes, I did.

Q How soon after these remarks were made did you indicate to Mr. McNamara that they had been made?

MR. HANKEN: Object, your Honor, unless I know which remarks are we talking about, the June 1st remarks --

MR. COFFEY: Any of these remarks.

A I didn't hear the question.

MR. HANKEN: Including June 1st?

THE COURT: Just a minute. Let's get the question and the time period. Why don't you rephrase the question.

MR. COFFEY: Thank you.



BY MR. COFFEY:

Q Directing your attention to the conversation you had with Mr. DiGirolamo on that Friday, a week prior to the conversation you had with Mr. DiGirolamo right before June 1st, did you indicate to Mr. McNamara you had such a conversation?

A Yes.

Q When you had a conversation with Mr. DiGirolamo several days immediately before June 1st, did you indicate that to Mr. McNamara?

A Yes.

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1  
2 A Right.

3 Q And you did not say one single word --

4 A Right.

5 Q -- about getting your arms busted, your legs  
6 busted or your brains busted or whatever; did you?

7 A Right.

8 Q And I asked you that about every single  
9 conversation you had with Tok; didn't I? And I asked you  
10 that with every single conversation you had with Carl; didn't  
11 I? And you did not mention one single word about this; did  
12 you?

13 A Right.

14 Q There never was a witness to these phone calls;  
15 was there?

16 A No.

17 Q No, right. And you told all this to McNamara;  
18 isn't that true?

19 A Right.  
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Q Did you ever write these down, these phone calls  
that you got?

A No. I called him immediately after.

Q Did you ever write them down?

A No.

Q I am going to show you some documents and ask if these things refresh your recollection as to whether or not you told these things to Mr. McNamara.

I will show you a report of Mr. McNamara's, dated May 18th. You tell me if you see anywhere in there that you told him that Mr. DiGirolamo threatened to break your head, your legs, your arms, any part of your body.

A Not in there.

Q It is not in there; is it?

A No.

Q This is Mr. McNamara's report; isn't it?

A Yeah.

Q Nothing in there about breaking your head, your legs, your arms?

A No.

Q Hurting you? In fact, there is nothing even in here about sending Carl up to collect?

A Right.

Q Isn't that true?

A They left a lot of things out.

Q In other words, you did not tell him that?

A In other words, I was too scared to remember.

Q Sir, didn't you just tell us that you told it to Mr. McNamara?



1  
2 A I left --

3 Q Didn't you just tell us not ten minutes ago or ten  
4 seconds ago that you told Mr. McNamara about all these threats  
5 to your body?

6 A Yes, I did.

7 Q Have you read his report?

8 A Yeah.

9 Q Is there one word in there about any threats to  
10 you?

11 A No.

12 Q How long do you think he has been writing up  
13 reports?

14 MR. COFFEY: Objection, your Honor.

15 THE COURT: Sustained.

16 BY MR. HANKEN:

17 Q If you know.

18 A I don't know.

19 MR. COFFEY: Objection.

20 THE COURT: Sustained. Mr. McNamara has  
21 testified to his years in the service with the  
22 FBI.

23 MR. HANKEN: I forgot, but I know it has been  
24 a long time.

25 Q With regard to May 18th, I will show you these

notes, and you tell me if it mentions your having told Mr. McNamara about even getting a telephone call from Tok or about Tok telling you you are going to get your legs busted, your arms busted, your brains busted.

MR. COFFEY: I think I would object. He asked two questions.

THE COURT: Take them in order.

MR. HANKEN: Yes.

BY MR. HANKEN:

Q Answer the first one. Is there anything about Tok even calling you up on that day?

A My eyes are starting to get blurry.

THE COURT: Take your time.

A (Continuing) No.

Q Anything in there about that?

A No.

THE COURT: I think there were three others, questions. Why don't you leave it there.

MR. HANKEN: Yes, your Honor. Thank you.

Q I believe my next question was is there anything in there about Tok having threatened to bust your legs or your arms or your brains.

A No.

Q Nothing in there about that, either? Right?



A (Shakes head)

Q Now let's go to May 22nd. I presume you told Mr. McNamara about everything that happened up till May 22nd; isn't that true?

A What was the question?

Q I presume you told Mr. McNamara about everything that happened to you with regard to Mr. DiGirolamo as of May 22nd?

A There's a lot I left out. My memory lost.

Q Let's just stick to the things that you told Mr. Coffey that you told Mr. McNamara; okay?

Is there anything in there on May 22nd about Tok having called you, anything in there about Tok threatening to break your legs or your arms or your brains? Anything?

A No.

Q Any threats at all to do anything?

A No.

Q All right. Let's go to May 25th.

Anything in there about a phone call from Tok?

A No.

Q Anything there about Tok telling you that he is going to send Carl up?

A No.

Q I cannot hear you, sir.

1  
2 A No.

3 Q Anything there about Tok saying to you he is going  
4 to bust parts of your body?

5 A No.

6 Q Threaten you in any way?

7 Again, these are Mr. McNamara's reports?

8 A Right.

9 Q Now let's go to May 27th.

10 My first question: Is there anything in there  
11 about a phone call from Tok?

12 A No, there wasn't.

13 Q I cannot hear you.

14 A No, there wasn't.

15 Q Anything in there about Tok asking Carl to come  
16 up or telling Carl to come up to see you?

17 A No, there wasn't.

18 Q Anything about Tok telling you he is going to have  
19 your arms busted or your legs busted or your brains busted?

20 A No.

21 Q Any threats at all in there from Tok?

22 A No.

23 Q I would leave a copy with you, but it is my only  
24 copy.

25 I believe you testified that on June 1st Tok



1  
2 called you -- and tell me if I am wrong -- and that Tok said  
3 you were going to get your legs busted; is that right? That  
4 is on June 1st?

5 A I think so, yes.

6 Q You think so. In other words, now you are not  
7 sure?

8 A It's hard to remember the exact dates.

9 Q Sir, please just answer my question.

10 A Okay. I'm not sure.

11 Q You are sure it is June 1st or you are not sure?

12 A I'm almost positive.

13 Q You did not tell that to Mr. Coffey. You said  
14 it was June 1st.

15 A Okay.

16 Q Is your testimony changing a little?

17 A No.

18 Q It is June 1st?

19 A Yeah.

20 Q No question in your mind?

21 A I'm not sure.

22 Q You are not sure?

23 A I know the three things he said to me, but I can't  
24 put 'em in date.

25 Q Let's look at June 1st.

Is there anything there about any threats to you from Mr. DiGirolamo to break your arms, bust your head, bust your brains, your legs, words like that?

A No, there isn't.

Q Pardon me?

A No, there isn't.

Q Nothing even on June 1st--

A No.

Q -- with regard to Tok threatening you; isn't that true?

A Right.

Q So, then, if I can just summarize this, on all these dates I have mentioned, which are the dates you have mentioned, all these conversations you said you had with Mr. DiGirolamo, none of these conversations appear in Mr. McNamara's notes?

A Right.

Q Isn't that true? No threats to bodily harm to you appear in Mr. McNamara's notes; isn't that true?

You claimed that you told all this to Mr. McNamara; isn't that true?

A Right.

Q You did not testify to that yesterday, when you answered my questions; isn't that true?



1  
2 A Yes, but I could have made a mistake.

3 Q Which mistake are we talking about now?

4 A Well, maybe I didn't tell Mr. McNamara everything  
5 that was said, but I called him as soon as he called.

6 Q In other words, you were calling Mr. McNamara  
7 but you were not telling him about the fact that your legs were  
8 going to get busted?

9 A No.

10 Q You forgot to mention that?

11 A I might have said it once. I'm not sure.

12 Q You are not sure that you told him? Did you or  
13 didn't you?

14 A I'm not sure.

15 Q You do not remember telling him?

16 A No.

17 Q If you were so scared and worried that your legs  
18 were going to get busted -- is that the very first thing you  
19 said to the FBI agents?

20 A First thing I told him, some guys are coming to  
21 come here to get collection money, that's all.

22 Q You did not tell him what the guys were going to  
23 do if they did not collect? Because that never happened.

24 MR. HANKEN: No further questions.  
25

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Adam -redirect

285- 286

\* \* \*

25

Q

Can you read that, sir?

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A

I get mixed up. My eyes. These things so blurry.

750 MAIN STREET

\* \* \*

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\* \* \*

On the other side of the coin, of course, is the major issue in this case, as I see it in this case, the credibility of Adam. There is little question in my mind that his testimony is honeycombed with inconsistencies, falsehoods and perhaps even admissions of perjury. My own notes are a mish-mash of inconsistencies by this witness -- and I do not intend to laundry-list the inconsistencies. I think if anyone reads the record, his head will be spinning after a relatively short trial with the type of witness that was on the stand. I think I make an understatement when I say that almost everything he said on one day he contradicted on the next day, and, in fact, within a ten- or fifteen-minute span he said about ten or fifteen different things.

I, too, find it absolutely inconceivable

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3 that he told Agent McNamara facts that he related  
4 on the stand and Agent McNamara did not record  
5 them.

6 I certainly got the feeling that he was  
7 extremely careless with his testimony and changed  
8 it by the minute;  
9

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17 Frankly, I sit here and I am not even sure  
18 when the debt was made. My notes indicate it was  
19 a Super Bowl game in January, and now we are back  
20 in November of 1972, when the debt was incurred  
21 over a period of weeks.

22 My notes indicate many, many other areas.  
23 I am particularly distressed when I learned that  
24 he made misstatements in a trial before me in  
25 January and he made misstatements to the grand  
jury; and his typical answer seems to be a pat one,



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2 that he was afraid and nervous, or he was looking  
3 to the future and not the past. And, of course,  
4 in my courtroom I certainly do not think he had  
5 anything to fear. The record should note that  
6 the defendant in that case was about one-third  
7 the size of Mr. Adam, very meek-looking person.  
8 I do not even think there was any physical  
9 confrontation at any time that would warrant fear,  
10 at least in my presence. I am certain before the  
11 grand jury there was not anyone present that  
12 would instill fear in this man.

13 I think if you closely analyze his testimony  
14 there is just serious question in my mind whether  
15 conviction should be based upon this type of  
16 witness the Government has put on.

17 On the other hand, that is not my province;  
18 it is the jury's province to determine credibility.

19 I even analyzed the transcript, as I am  
20 sure you did. It is almost as if Adam baited  
21 Alterio, who certainly is not very bright at all --  
22 he appeared before me for a change of plea -- into  
23 saying what he did, and turned him right around  
24 from a severe beating to an almost handshake, by,  
25 as the witness himself said, doubletalking him.

P R O C E E D I N G S

THE COURT: The record should note that there has been a delay in commencing the trial this morning. The Court was informed by Mr. Hanken that he intended to rest and he submitted his requests to charge, and, of course, I assumed that we would immediately proceed to the summations and the charge to the jury and hopefully this case would be concluded today. However, Mr. Coffey, for the Government, revealed a set of circumstances that require that another witness be called.

I think it is incumbent upon the Court to put on the record exactly what was stated to the Court, with Mr. Hanken present:

Apparently Mr. McNamara last week learned that the witness Harvey Adam had been under a psychiatrist's care and that he had prescribed for him two drugs, Cogentin and Trilafon. The witness admitted taking these drugs prior to and on the stand while he was testifying.

Mr. McNamara also revealed that at the conclusion of Thursday's session Mr. Adam was found on the couch in the United States Attorney's office



1  
2 in a stupor and, upon questioning, did not even  
3 recognize Mr. McNamara.

4 Further investigation on Friday, I believe,  
5 by Mr. McNamara, revealed that the witness had  
6 been seeing Dr. D'Apice, and that in conversation  
7 with the doctor learned that these drugs could  
8 cause glaucoma, dry mouth, blurred vision,  
9 nervousness and perhaps even some absent-minded-  
10 ness with loss of memory. If the drug wears off,  
11 the witness could become pugnacious -- or the  
12 patient could become pugnacious.

13 At this point I conferred with Mr. McNamara,  
14 Mr. Coffey and Mr. Hanken. Mr. McNamara revealed  
15 approximately what I put on the record. Contact  
16 having been made with Dr. D'Apice -- and he will  
17 be here to testify at three o'clock -- the Court  
18 finds that this information is highly relevant,  
19 for several reasons:

20 One, an inference -- and only an inference --  
21 might be drawn from the witness' testimony that  
22 he was not taking any medication or drugs. I  
23 have not made a complete study of the transcript,  
24 because I only had the benefit of the court  
25 reporter reading back certain sections to me. I

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1  
2 find that there was cross-examination concerning  
3 the witness' use of pills and drugs and other  
4 medications, but I do not find a direct conflict  
5 that might amount to perjury. However, at one  
6 point he said "I don't take drugs." Later on  
7 he did say he had prescriptions from doctors, and  
8 mentions a Dr. Climan. At no time did he  
9 mention Dr. D'Apice, at least according to our  
10 best information at this point.

11 Secondly, as the record even in the cold  
12 written form would indicate, the witness was  
13 ambiguous, confused, contradictory and, without  
14 stretching a point, very close to committing  
15 perjury throughout his testimony.

16 Therefore, for those and other reasons, it  
17 seems to the Court crystal-clear that the jury  
18 have the benefit of Dr. D'Apice's testimony with  
19 respect to the type of drug the witness was  
20 taking prior to and on the stand during his  
21 testimony, how that in any way might affect his  
22 testimony and any other information that he can  
23 impart which would reflect on the witness' physical  
24 condition, mental condition and credibility while  
25 testifying in this courtroom.



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2  
3 The Court also wishes to note for the record  
4 that despite the protestations of the Assistant  
5 United States Attorney, the Court feels he was  
6 obligated to impart this information much sooner  
7 than this morning, if not to the Court, at least  
8 to Mr. Hanken. Apparently the Assistant United  
9 States Attorney was well aware of this situation  
10 on Friday, and I believe the delay in relaying  
11 this highly important information until the  
12 eleventh hour, when I am about to take the bench  
13 to charge the jury, has caused an inconvenience  
14 and a delay that is unnecessary, and, certainly,  
15 if we had known about this over the weekend or  
16 even yesterday, we would have been prepared this  
17 morning to put Dr. D'Apice on the stand.

18 With that, I think the best way to proceed  
19 at this point is to bring in the jury, excuse them  
20 until three o'clock. Hopefully the testimony  
21 should be completed by five, and we will have the  
22 summations and charge tomorrow morning. I will  
23 have some of the other matters scheduled go over.

24 Bring in the jury.

25 (Jury presents)

THE COURT: You may be seated, Ladies and

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JAMES P. McNAMARA, called as a witness  
by the defendant, having been previously duly sworn,  
was examined and testified further as follows:

THE COURT: Mr. McNamara, you have previously been sworn.

THE WITNESS: Yes, your Honor.

THE COURT: Consider yourself still under oath.

DIRECT EXAMINATION

BY MR. HANKEN:

Q Mr. McNamara, directing your attention to last Thursday, which I believe was the last day of testimony last week --

A Yes.

Q -- calling your attention to approximately three or four o'clock --

A Yes.

Q -- did you have occasion to see Harvey Adam outside the courtroom?

A Yes, I did.

Q Where did you see him?

A Down the U. S. Attorney's office.

Q Was he in there alone when you saw him?

A I believe there was a secretary in there readying

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the place up for the new U. S. Attorney. She was in and out.  
I don't know if she was in there that precise moment or not.

Q When you walked in, where was Mr. Adam?

A Sleeping on the couch.

Q Lying on a couch?

A Lying on a couch.

Q Did he appear to be sleeping to you?

A Yes, he did.

Q Did you approach him?

A Yes, I did.

Q Did you wake him?

A Yes, I did.

Q Did you ask him anything?

A No, I didn't ask him anything.

Q Did he say anything to you?

A No, he didn't say anything to me. I just shook  
him and told him to get up, that's all.

Q Did he indicate whether or not he recognized you?

A Not at that time, no.

Q Did he appear to recognize you?

A Not when he first got up, no.

Q Did he say to you something to the effect of who  
are you?

A Yes, he did.

1  
2 Q Did he indicate that he did not know where he was?

3 A I'd say about a minute or two later we were  
4 walking down the hall. I got him out of -- to explain it.  
5 I woke him up and he stood up and we started walking down the  
6 hallway towards the elevator, and he was sort of staggering,  
7 and I asked him what's the matter, and he said to me "Who are  
8 you?,"

9 Q This is as you are walking towards the elevator?

10 A Towards the elevator, yes.

11 Q Approximately how far is the elevator from the  
12 U. S. Attorney's office?

13 A Maybe 75 to 90 feet.

14 Q You were walking together?

15 A I was about two steps ahead of him. He was  
16 dragging behind me.

17 Q When you say "staggering," can you give us more  
18 detailed description of how he was walking?

19 A Sort of shaking -- well, as if he maybe -- like  
20 a -- intoxicated, or he didn't exactly know where he was at  
21 that precise moment.

22 Q So he appeared to be intoxicated to you?

23 A When I say intoxicated, I'm talking about the  
24 description of an intoxicated person.

25 Q Yes.



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A He was staggering.

Q An intoxicated person would appear --

A Staggering a little bit.

Q And he indicated to you that he did not know where he was?

A Yes, he said "Where am I?"

Q And he also indicated to you that he did not know who you were?

A That's right.

Q I believe you testified on direct examination that you had spoken to him about forty or fifty times?

A Yes.

Q Would you characterize his manner and his state of mind as being in a stupor?

A It's hard to characterize it. I knew there was something wrong with him. He wasn't acting the way he had been in the past. I knew that.

Q Let me ask you this:

Did you ever characterize his behavior or his manner or his state of mind to me as being in a stupor?

A Like he appeared -- he didn't know where he was, he didn't know who I was, and he took me by surprise when he said that.

Q Yes. If you would just answer my question. Did

McNamara - direct

you at one time characterize his manner and state of mind to me and characterize it as you thought he was in a stupor?

A I may have. I don't recall.

Q You do not recall whether you said that or not?

A Whether I used the word "stupor" or not. It's hard to visualize. I mean it took me by surprise he didn't know where he was and who I was.

Q Do you recall having a conversation within the past several hours with certain members of the Judiciary --

A Yes.

Q -- and myself and Mr. Coffey?

A Yes.

Q And you recall using the word "stupor"?

A No, I don't. I don't recall using that word, no.

Q You are not saying you did not use it?

A No, I'm not saying I didn't.

Q You might have used it?

A I may have.

Q Did he mention to you whether or not he had taken any drugs that day? I am talking about Thursday.

A Yes, he had.

Q Did he tell you what kind of drugs he took?

A He had some prescription -- I can't answer that question. He didn't tell me what. I asked him what pre --



1  
2 pills he had taken. He handed me two prescription bottles.

3 Q When you say prescription bottles, what does that  
4 mean?

5 A A little capsule that you get from a pharmacy.  
6 It has the name of the pharmacy, the type of drug, usually the  
7 type or the -- directions for the medication, and a doctor's  
8 name on the bottom.

9 Q Yes. But you do not know what type of pills were  
10 in the bottle; isn't that true?

11 A That's true.

12 Q In other words, they could have been a very potent,  
13 powerful drug, for all you know?

14 MR. COFFEY: Objection.

15 THE COURT: Sustained.

16 BY MR. HANKEN:

17 Q Do you know the type of pill that was in the  
18 bottle?

19 A Just from the label.

20 Q You do not know the kind of pill; you did not have  
21 it examined or anything; did you?

22 A No, I didn't.

23 Q So you just assumed that the type of pill that was  
24 labeled was the type of pill that was in the bottle?

25 MR. COFFEY: Objection again as to what he

assumed, your Honor.

THE COURT: Yes, sustained.

BY MR. HANKEN:

Q You do not know as a fact, do you, what type of pill was in the bottle?

A No, I don't.

Q What did the label say with regard to the kind of pills they were?

A Can I refresh my recollection? I wrote it on a piece of paper.

Q Sure.

A One was C-o-g-e-n-t-i-n --

Q Would you spell that again, please?

A C-o-g-e-n-t-i-n -- and the other was Trilafon, T-r-i-l-a-f-o-n.

Q So there were two bottles?

A Two capsules, yes.

Q Two bottles or two capsules?

A Plastic capsules.

Q Plastic containers?

A Containers, yes.

Q Did you see how many pills were left in each container, or were there any pills in the containers?

A Oh, yes, there were pills. I'd say maybe ten or



1  
2 fifteen. I'm not sure. I didn't count them.

3 Q And you gave them back to him then?

4 A Yes, I did.

5 Q Did he tell you that he had taken them that day?

6 A Yes, he did.

7 Q That was both the Cogentin and the Trilafon?

8 A Yes, sir.

9 Q Did he tell you how much of each he took?

10 A Approximately five of each.

11 Q Did he tell you when he took them?

12 A During the day.

13 Q That was while he was testifying on the stand?

14 A Yes.

15 Q Did he tell you that he took them before he  
16 testified, while he testified and after he testified, or did  
17 he pin down exactly when he took them?

18 A No, he did not.

19 Q Didn't he tell you he took them while he was on  
20 the stand?

21 A Told me "while I was on the stand yesterday."

22 Q Those were his words, "while I was on the stand"?

23 A Yes.

24 Q Did the label indicate how much he should take  
25 during the 24-hour period?

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A One three times daily for each prescription.

Q One three times daily?

A Right.

Q So that is one every eight hours?

A One pill every eight hours, I would assume, each day.

Q And he took five of each --

A That's correct.

Q -- that day, so that is ten --

A That's right.

Q -- in a period of while he was on the stand?

A I can't say the period while he was on the stand. I don't know.

Q Just his words to you "while I was on the stand"?

A Right.

Q I am just using his words.

What happened after you went down the elevator with him?

A We walked over to my car about two blocks from here.

Q Where did you go then?

A I took him home.

Q Did you see him again that day?

A No, I did not.

Q That was your only relationship with him that day?



A That's right.

Mr. HANKEN: Thank you very much.

THE COURT: Mr. Coffey.

MR. COFFEY: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. COFFEY:

Q Agent McNamara, did you disclose this information to Mr. Hanken?

A Yes, I did.

Q And to the Court?

A Yes, I did.

MR. HANKEN: Excuse me, your Honor. I do not think the jury should be left with the impression I knew this last Thursday.

Q When did you disclose it?

A This morning.

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A I saw Mr. Adams on 7/8/74.

Q By the way, is this the first time we have ever met, have ever talked?

A Yes.

Q Today?

A Yes.

Q You first saw him July 8, 1974?

A Yes, that's correct.

Q When is the next time you saw him?

A 7/16.

I can give you all the dates, if you wish.

Q All right.

A 8/6, 8/9, 8/16, and, of course, today, 8/20.

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THE COURT: The objection is sustained,  
therefore.

MR. HANKEN: All right.

BY MR. HANKEN:

Q Doctor, I presume when he came in he indicated  
some complaint to you?

A Yes, he did.

Q He was having some troubles?

A Yes.

Q Some mental problems?

A Mental problems, that's correct.

Q I presume it is customary for you to write the  
pertinent things down that a prospective patient tells you  
about his problems?

A That's correct. Not specifically necessarily.  
I think if you will see in my note I was more interested in  
the diagnosis of a psychotic depressive reaction and also in  
the fact that he has history of drug use in the past, and  
also that he was delusional, hearing noises, hearing music,  
hearing a buzzing sound. These were pertinent things to me.

Q Giving us a lot of meat there. You will have  
to go a little slow.

A That little bit means a lot to me when I look at  
it.

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A Mr. Adam had originally told me that he sought out Dr. Willis early in the morning because he was extremely nervous and he could not cope; things were falling apart around him. He was very concerned about a recent divorce that he had had. He was concerned about various other personal problems relating to the divorce, relating to his business.



1  
2 Q All right.

3 A These were mainly the chief complaints, and that  
4 he could not cope.

5 It was at that time he gave me symptoms which  
6 indicated that he was suffering from a severe depression.  
7 Now, that's a rather general term, but, to kind of qualify it a  
8 little bit, Harvey was psychotic at the time. In other  
9 words --

10 Q Sir, if I can just interrupt you, can you tell  
11 the ladies and gentlemen of the jury what severe depression  
12 is, and then would you define for us what psychotic is?

13 A Right.

14 "Depression" I think is a rather general term  
15 which everyone generally recognizes, but the term "depression"  
16 to a psychiatrist represents a certain constellation of  
17 symptoms which can be varied. We have certain vegetative  
18 signs of depression, such as early morning awakening, various  
19 bodily problems, such as constipation or various other  
20 symptoms. This is a condition which a person feels  
21 extremely blue, that he -- it's a prime disorder or mood or  
22 what we call an affect, with multitude and a myriad of  
23 symptoms, which, if -- it would be too numerous to mention.

24 Q Is the inability to recollect events accurately or  
25 even care about recollecting events accurately a symptom of --

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2 A Yes.

3 Q -- a severe depression?

4 A Yes, a poor concentration.

5 Q Poor concentration?

6 A Poor memory, yes, that's correct.

7 Q All right, proceed.

8 A Okay.

9 Now, psychotic takes it a step further, in that  
10 there is a certain loss of reality testing, and reality  
11 testing means there is an inability to decide, to discern,  
12 what is inside you from what is outside you.

13 Q By that, can a layman take that as being not  
14 being able to distinguish reality from unreality?

15 A That's correct. It's almost like with your eyes  
16 wide open you are dreaming, so to speak.

17 Q All right.

18 A I mean that's an oversimplification, but I think  
19 you get the idea.

20 Q Could you give us some symptoms of a person --  
21 would you say it is a psychotic personality or psychotic  
22 disorder?

23 A Psychotic reaction or a disease.

24 Q Or a disease?

25 A Yes, it's a psychosis.



1  
2 Q By the way, as a psychiatrist you are engaged in  
3 the study of mental diseases?

4 A Or disorders, that's correct.

5 Q Diseases or disorders?

6 A Right. This is a difficult term, because some  
7 people -- depending on how you want to look at it, okay.

8 Q Can you give us some symptoms of a person with a  
9 psychotic problem, as Mr. Adam had, with regard to ability to  
10 recall events, ability to understand the truth and meaning of  
11 an oath, and so forth?

12 A Very often with a psychotic depression of this  
13 nature the person becomes extremely paranoid. I think people  
14 are pretty familiar with that word. It's suffering from  
15 feelings of persecution. All right.

16 Q In other words, would --

17 THE COURT: Why don't you let the doctor  
18 finish.

19 MR. HANKEN: Okay. Sorry, your Honor.

20 THE COURT: And then you can proceed.

21 Go ahead, Doctor.

22 A And very often the person can be paranoid or  
23 delusional, which means having false beliefs. Okay. He might  
24 feel that people in his family are out to get him, other people  
25 are out to get him, or someone's out to do him in, so to speak.

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2 This is one very important symptom, which does not always  
3 occur, incidentally.  
4

5 In psychotic depression, these delusions are  
6 usually very prominent, okay; yet the person may be partially  
7 in touch with reality at times. Very often when the person  
8 is under stress a lot of his -- what we call his defenses  
9 will break down, and again the paranoid thoughts will  
10 develop. He may have periods of time where he is not aware--  
11 he is aware that some of his thinking is false.

12 Q If I may just ask you this, sir, during periods  
13 of stress you say these delusions will reoccur?

14 A Very, very frequently, yes.

15 Q If a man were to testify on a stand in a case  
16 which is, let's say, unpleasant to him -- and especially with  
17 regard to Harvey Adams, with all his preexisting problems  
18 that you know of -- would you call that a period of stress?

19 A Yes, that is a period of stress.

20 Q So it is quite possible, at least in your view,  
21 that Harvey could have been having these delusions--

22 A Yes, it is probable.

23 Q -- and these reactions while he was testifying  
24 under oath?

25 A It is probable. It is probable, yes.

Q It is probable?



1  
2 A Yes, it is probable.

3 Q I take it that it is likewise probable that, if  
4 he were having these delusions of persecution and so forth,  
5 these other paranoid reactions, while under oath, he really  
6 could not appreciate the true essence and meanings of his oath?

7 MR. COFFEY: Objection, your Honor. That  
8 is hypothetical. I do not think there are facts  
9 before this witness to testify whether in this  
10 case he could have --

11 THE COURT: We have a witness on the stand  
12 who is an expert, and I am sure -- and if I have  
13 to so instruct you, Doctor, which I am sure I do  
14 not -- I am sure that if he is not qualified to  
15 answer or his unable to, he won't. But if he  
16 has an opinion, he may express it.

17 So I will overrule the objection and leave  
18 it to the doctor to handle himself with respect to  
19 the question.

20 THE WITNESS: Would you repeat the question?

21 (The pending question was read by the  
22 reporter as above recorded.)

23 A That is a probability.

24 Q Thank you, sir.

25 I believe you just testified that one of the

15 Q I think you testified that under times of stress  
16 there are certain symptoms which a person suffering from  
17 psychotic depression would display?

18 A That's correct.

19 Q And if he took a prescribed drug, that, in turn,  
20 might show other type of symptoms?

21 A Uh huh.

22 Q If Mr. Adam took Cogentin or Trilafon or both  
23 while he was here testifying, would it be likely that he would  
24 display some dryness of the mouth?

25 A Definitely. That's one of the definite side  
2 effects.

3 Q How about glaucoma?

4 A Glaucoma?

5 Q Cannot read, eyes blurring up.

6 A Oh, yes, but that's not glaucoma. Yes, definitely,  
7 yes.

8 Q An inability to read?

9 A Yes, very common side effect.



1  
2 I said, "Well, if you feel you are able to do it, you may go.  
3 But if you feel it's too stressful for you, I will write some  
4 kind of a letter for you," not realizing the scope of the  
5 situation, believe me.

6 Q I take it it has had an effect on Mr. Adam,  
7 the experience, being in court?

8 A Definitely, definitely.

9 Q I want to be clear about this, Doctor: Were  
10 you originally recommending to Mr. Adam he not testify  
11 because of the adverse effect and the stress which would  
12 result from his testifying?

13 A Yes.

14 Q All right.

15 A I must --

16 Q You did not reach any conclusion, did you, that  
17 he was not able, if he did testify, to testify truthfully or  
18 competently?

19 A No, I did not. As I pointed out, I did not know  
20 the scope of the situation. I thought it was just a simple  
21 Circuit Court type of thing.

22 Q At the time you observed Mr. Adam, was it your  
23 opinion that he could testify truthfully and competently, as  
24 best you could judge from seeing him?

25 MR. HANKEN: Your Honor, I will object to

1  
2 that.

3 A That I can't --

4 MR. HANKEN: He said he did not make such a  
5 judgment because he did not realize --

6 THE COURT: I think that is all he was  
7 going to say.

8 THE WITNESS: Yes. I can't do it.

9 MR. HANKEN: The answer is that he cannot  
10 make such a judgment.

11 THE COURT: Your objection was that he has  
12 answered the question already, and I am saying he  
13 is giving the same question on cross, so I will  
14 overrule the objection.

15 BY MR. COFFEY:

16 Q When Mr. Adam was in your office on those six  
17 occasions, did he understand he was, in fact, in your office?

18 A Oh, yes.

19 Q He understand who he was?

20 A Oh, definitely.

21 Q Did he seem to understand the problems he was  
22 relating?

23 A Yes.

24 Q His divorce occurred back in 1973; did it not?

25 A Yes, I believe so. It was over.



CERTIFICATION

This is to certify that on March 21, 1975 a copy of this appendix was mailed first class postage prepaid to the Office of the United States Attorney, 141 Church Street, New Haven, Connecticut and to Paul E. Coffey, Special Assistant U.S. Attorney, 450 Main Street, Hartford, Connecticut.

  
Charles Hanken